

JOSH STEIN
ATTORNEY GENERAL



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November 19, 2021

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Michael K. Rivenbark
Moore's Aerial Applicators
204 South 18th Street
Morehead, NC 28577

Re: IR2019-109

Dear Mr. Rivenbark:

Enclosed for your files is a copy of the Settlement Agreement which was approved by the Pesticide Board on November 15, 2021. If you have not already done so, please remit your payment(s) as required by the terms of the Settlement Agreement. The check(s) should be made payable to the North Carolina Department of Agriculture and Consumer Services, with the file number listed on the reference line above printed on it. Please mail the check to this address:

J. Patrick Jones
Deputy Director of Pesticide Programs
North Carolina Department of Agriculture and Consumer Services
Structural Pest Control and Pesticides Division
1090 Mail Service Center
Raleigh, NC 27699-1090

Thank you for your cooperation in this matter.

Sincerely,

Christopher R. McLennan
Assistant Attorney General

Enclosures

cc: J. Patrick Jones

BEFORE THE NORTH CAROLINA
PESTICIDE BOARD
File No. IR2019-109

File No. IR2019-109

Complainant,

v.

SETTLEMENT AGREEMENT

MICHAEL K. RIVENBARK,

Respondent.

1. At all times relevant hereto, Respondent held Aerial Pesticide Applicator License Number 027-788 for Moore's Aerial Applicators in Morehead, North Carolina.

3. Mrs. Wilkes contacted Respondent while Complainant's Inspector Williams and Merritt were on site and it was determined that Respondent did not possess the proper category on his license to make turf and ornamental applications.

4. On October 23, 2019, Complainant's Inspectors Williams and Merritt met with Respondent and he drafted a statement for himself and another for Mrs. Wilkes admitting to making commercial pesticide applications to landscapes without a proper license.

5. According to the NCDA&CS database, Respondent has not yet obtained Commercial Ground Applicator's License in the turf and ornamental category.

6. The pesticides involved in this investigation were identified as:

Prodiamine 65 WDG (prodiamine), EPA Reg. No. 66222-89, a selective preemergent herbicide, Class III, Caution.

Triplet SF Selective Herbicide (2,4-D, mecoprop, dicamba), EPA Reg. No. 228-312, a selective broadleaf herbicide, Class I, Danger.

Atrazine 4L Flowable Herbicide (atrazine), EPA Reg. No. 35915-4-60063, a triazine herbicide, Class III, Caution.

Captan 4L (captan), EPA Reg. No., a fungicide, Class I, Danger.

Flexstar GT 3.5 Herbicide (fomesafen), EPA Reg. No. 100-1385, a diphenylether soybean herbicide, Class III, Caution.

7. The labels for the pesticides involved state:

Captan 4L:

"Container Disposal ... Refillable container. Refill this container with pesticide only. Do not reuse this container for any other purpose."

8. As a result of its investigation, Complainant alleges that Respondent, either by act or omission, violated the following provision(s) of the North Carolina Pesticide Law and/or Regulations:

N.C.G.S. § 143-443(b)(3)

It shall be unlawful for any person to
use any pesticide in a manner inconsistent with its labeling.

N.C.G.S. §143-452(a)

No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator

N.C.G.S. §143-456(a) (2), (5), and (15)

The Board may deny, suspend, modify, or revoke a license issued under this Part if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;

Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;

Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

02 NCAC 09L .0503(a)

The Commissioner shall require the licensing of at least one person at each business location who must be responsible for the application of pesticides for routine pest control situations.

9. Each of the above violations of the North Carolina Pesticide Law and/or Regulations may result in the denial, suspension, or revocation of a pesticide license and/or a civil penalty which may be assessed by the Pesticide Board as follows:

N.C.G.S. § 143-469(b)

A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article.

10. The parties are willing to accept a compromise and settlement of the dispute between them and this Agreement is made in order to completely and finally resolve their claims and differences as stated herein upon the following conditions:

- (a) That Respondent agrees to pay the sum of One Thousand Two Hundred Dollars (\$1,200.00) to the North Carolina Department of Agriculture and Consumer Services within thirty (30) days of the Board's approval of this Agreement;
- (b) That Respondent acknowledges his right to a formal hearing to resolve this matter and waives said right by consenting to the terms of this Agreement;
- (c) That Respondent agrees that if he fails to pay the total agreed upon sum of One Thousand Two Hundred Dollars (\$1,200.00) within thirty (30) days of the Board's approval of this Agreement, this Agreement will constitute a civil penalty assessment of the Board of One Thousand Two Hundred Dollars (\$1,200.00) for violations of the above-stated North Carolina Pesticide Law and Regulations;
 - (i) That Respondent acknowledges his right to judicial review of the civil penalty assessment in paragraph 10(c) and waives said right by consenting to the terms of this Agreement.
 - (ii) Respondent further agrees that the collection procedures outlined in N.C.G.S. § 143-469(c) may be instituted based on the civil penalty assessment contained in paragraph 10(c) of this Agreement.
 - (iii) Respondent further agrees to indemnify and fully reimburse the North Carolina Department of Agriculture and Consumer Services for any costs, including court costs and reasonable attorneys' fees, incurred as a result of

any collection procedure outlined in N.C.G.S. § 143-469(c) that is necessitated by Respondent's failure to pay the agreed sum pursuant to the terms of this Settlement Agreement.

- (d) Respondent further agrees that all sums payable to Complainant pursuant to this Agreement are nondischargeable in bankruptcy under 11 U.S.C. §523. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Complainant in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Complainant's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.

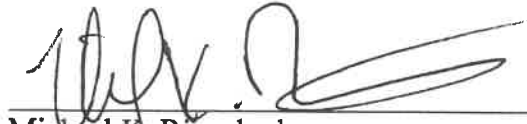
11. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole Agreement between them.

12. The parties attest that this Agreement is voluntarily made after ample opportunity to review the document with any individuals, advisors and counsel so desired.

13. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.

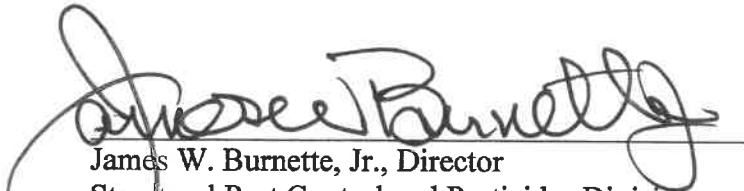
WHEREFORE, the parties to this action hereby notify the Board that it will be unnecessary to hold a hearing regarding this matter and respectfully request approval of this Settlement Agreement.

BY CONSENT:



Michael K. Rivenbark
Moore's Aerial Applicators
204 South 18th Street
Morehead, NC, 28577

10/4/2021
Date



James W. Burnette, Jr., Director
Structural Pest Control and Pesticides Division
North Carolina Department of Agriculture and
Consumer Services
1090 Mail Service Center
Raleigh, North Carolina 27699-1090

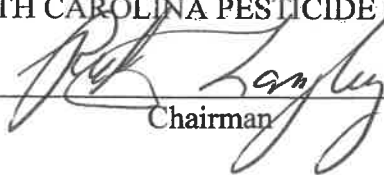
10/22/2021
Date

APPROVED AND ORDERED FILED,

this the 15th day of November, 2021

NORTH CAROLINA PESTICIDE BOARD

BY:



Chairman



